IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1454 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT WATER SUPPLY &SEWARAGEBOARD

Versus

DEVENDRA AMRUTLAL UPADHYAYA

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Appearance:

MR KH BAXI for Petitioner

MR GS UPADHYAY for Respondent No. 1

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/12/2000

C A V. JUDGEMENT

The petitioner is a Board established under the provisions of the Gujarat Water Supply and Sewerage Board Act, 1978 for the purpose of rapid development and proper regularization of water supply and sewerage services in

the State of Gujarat. This petition has been filed by this petitioner Board under Articles 226 and 227 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the order passed by the Labour Court in Reference No.LCB 35 of 1989 as wrong, illegal, null and void. It appears from the copy of the award placed at page no.9 to the petition that the aforesaid dispute was referred by Asstt.Commissioner of Labour, Bhavnagar to the Labour Court at Bhavnagar and it was registered as LCB No.35/89. There the respondent herein, contended that the respondent was appointed as Typist and was paid Rs.16.35 paise per day. That it was a permanent post and his services were terminated and he was relieved by order dated 20.9.1998. That no notice was served and no pay in lieu of the notice was paid to him. That even seniority list has not been prepared. That the juniors were retained in service and the petitioner has been relieved. That thereafter, new persons have been recruited and no offer has been made to the petitioner by registered post. That a demand was placed on 17.12.1988 by writing a letter and yet the demand was also not accepted. That the petitioner was not given a job and, therefore, it amounted to breach of section 20(a)(h) of the Industrial Disputes Act, 1947 and, therefore, the petitioner is entitled to be reinstated in service. The Labour Court registered the said matter as aforesaid. The present petitioner submitted reply at Exh.6 and, there, it was contended that the respondent was not continuously working and, he has not been relieved under verbal order dated 20.9.1988. That there is no retrenchment, that the respondent was being appointed as and when there was work and he was relieved as and when there was no work and, therefore, there is no breach of provisions of the said Act and hence the case be dismissed. Learned Judge of the Labour Court, considered the rival cases and ultimately found that the respondent was entitled to the relief claimed. Therefore, an award was passed on 15.5.1991 by the learned Judge of the Labour Court directing the petitioner to reinstate the respondent with backwages and with continuity in service.

2. Feeling aggrieved by the said judgment and order of the Labour Court, the petitioner has preferred this petition. It has been mainly contended here that there is no permanent post in the establishment of the petitioner and, therefore, the respondent could not be reinstated in that position. It is contended that letters were sent to the respondents by Registered Post and yet the respondent did not resume and, therefore, there is no question of passing any order in favour of

the respondent, when the respondent had not completed 240 days as required by the said Act. That in spite of the aforesaid position, the Labour Court has decided the matter against the petitioner. That therefore, the present petition be allowed and the aforesaid award of the Labour Court be quashed and set aside.

3. On receipt of the writ petition, rule was issued and ad-interim relief was granted subject to section 17(b) of the Act. Mr P H Pathak, learned Advocate appears for respondent and Mr K H Baxi, learned Advocate appears for the petitioner. I have heard both the learned Advocates for the parties and have perused the papers. It has been contended on behalf of the respondent by Mr Pathak that the respondent has served the petitioner for a very long time between 1987 and 1988. It is his case that the respondent worked with the petitioner as follows:

19.5.1987 30 days
1.7.1907 30 days
01.8.1987 30 days
1.10.1987 30 days
2.11.1987 30 days
1.12.1987 30 days
1.01.1988 to 29.2.1988
1.03.1988 to 31.3.1988

It has, therefore, been contended that the respondent has put in more than 240 days in one year and there was artificial break between two appointments. Therefore, it is the contention of Mr Pathak that there was nothing wrong in passing the aforesaid order by the Labour Court. He has relied on a decision in the case of MCD v. Praveen Kumar Jain & Ors., (1988 (2) LLJ 674). There it has been laid down that if a daily rated workman is discharged from service without complying with Section 25-F, then the order of discharge would have been proper if the management had complied with section 25-F and given notice and compensation. If it was construed as a punitive order then again the order would be bad for want of enquiry. The Hon'ble Supreme Court, while upholding the award of reinstatement passed by the Labour Court and High Court, reduced the backwages from full backwages to 50%.

4. On the other hand, Mr K H Baxi, learned Advocate has argued that the respondent was given work when there was work. Therefore, he could not be continued when there was no work. Learned Advocate for the petitioner has relied upon the decision in the case of J J Shrimali

v. D.D.O. Mehsana, reported in 1989 (1) GLR 396. There it is observed that where due to famine and drought conditions, scarcity relief works are undertaken and some persons are employed on an express understanding that their appointments are absolutely temporary and on an ad hoc basis, termination of their services does not amount to retrenchment, and the employees are not entitled to wages for notice period and compensation. The principal idea is to give employment to famine striken people rather than to build roads, tanks etc. There is no material on record to show that the respondent was employed in the aforesaid exigency. Moreover, the Labour Court has found it otherwise, which is a question of fact which has been dealt with by the Labour Court elaborately. There is no other material to show to take a different view than the view taken by the Labour Court. The Labour Court has also taken a view that one Harpal Gohil has been appointed by the petitioner after the respondent was relieved. This is again a question of fact which has been decided by the Labour Court from the material available with the Labour Court. There is no other material to differ from the view taken by the Labour Court in this behalf also. If a new person has been appointed after relieving of the respondent, then it was incumbent upon the petitioner to offer employment to the respondent, which is not proved to have been done in the present case. Efforts were made to show that offer was made but he did not resume. The Labour Court has not accepted this version. Moreover in the communication dated 2.8.1989, at page 17, offer was made for typing job for one day i.e. for 5.8.1989. This cannot be treated to be an offer within the meaning of aforesaid provisions of law. Suffice it to say that there is no material on record to show that the Labour Court was wrong in taking the above said view. After all we are not sitting as Court of appeal over the decision of Labour Court. This is an extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. Therefore, it is the duty of the petitioner to show to this court that Labour Court has committed illegality in passing the aforesaid award in favour of the respondent. I am of the view that the petitioner has not succeeded in satisfying this Court that the Labour Court has committed illegality and irregularity in passing the award. In that view of the matter, there is no reason to interfere with the said award.

In the result, this petition is dismissed. Rule is discharged. No order as to costs.

01.12.2000 [D P Buch, J.]

msp

Heard the learned Advocate for the parties. The interim relief granted earlier will continue for three weeks from today with a view to enable the petitioner to take appropriate steps.

[D P Buch, J.]